

MINUTES OF MEETING OF THE CORPORATIONS COMMITTEE

January 3, 2003

A regular meeting of the Corporations Committee (the “Committee”) of the Business Law Section of the State Bar of California was held at the San Francisco Airport Westin Hotel on January 3, 2003. Attendance was as follows:

MEMEBERS PRESENT:

Keith Paul Bishop
Bruce Dravis
James K. Dyer, Jr.
Teri Shugart Erickson
James F. Fotenos
Steven K. Hazen
Mark T. Hiraide
Victor Hsu
Brian D. McAllister
Stewart Laughlin McDowell
David M. Pike
James R. Walther
Daniel J. Weiser
Neil J Wertlieb
Nancy Wojtas
Brian Wong

MEMBERS ABSENT:

Curt C. Barwick
John C. Carpenter
Nelson D. Crandall
Timothy J. Fitzpatrick
Cynthia Ribas
John H. Marlow
Keith B. Martin
Ethna M. S. Piazza
Randall Brent Schai

LIAISONS PRESENT:

David Caplan, Executive Committee
Timothy Le Bas, Department of Corporations
Gayle Oshima, Department of Corporations

The minutes summarize discussions primarily in the order items were listed on the Agenda for the meeting previously circulated to members of the Committee, which is not necessarily the order in which the items were actually taken up at the meeting. The Committee did not take up those topics listed on the Agenda, which are not described in these minutes.

I. ADMINISTRATIVE MATTERS.

A. Opening Remarks and Announcements. The meeting was called to order by Co-Chair Bruce Dravis at approximately 9:30 a.m. Mr. Dravis confirmed that the Committee’s comment letter to the Securities and Exchange Commission (“SEC”) was filed before the deadline, and provided a brief update on the events that transpired in connection with the comment letter following the December meeting of the Committee.

B. Minutes of December 6, 2002 Meeting. A few comments were made concerning the draft minutes of the meeting of the Committee held on December 6, 2002. The minutes of the December 6, 2002 meeting previously circulated to the members, with minor revisions to address the comments made during this meeting, were approved by the Committee.

II. LIAISONS' REPORTS AND DISCUSSION.

A. Department of Corporations. Tim Le Bas reported that the Department of Corporations ("Department") is participating in an interagency task force ("Interagency Task Force") established by Governor Davis to review the implementation of the Sarbanes-Oxley Act. Also participating on the Interagency Task Force are the State and Consumer Services Agency, the Business, Transportation and Housing Agency, and the State Board of Accountancy. The purpose of the Interagency Task Force is to develop a plan (within 180 days) to coordinate the Sarbanes-Oxley Act with California law. Mr. Le Bas noted that Pennsylvania was the only other state of which he was aware that established a similar task force. Mr. Le Bas also reported that the Interagency Task Force planned to deliver its report to the Governor within the next couple of weeks.

Next, Mr. Le Bas reported on certain significant legislation that was adopted in 2002, including: (i) SB 1926 (Costa), relating to consumer protection technical amendments; (ii) SB 898 (Perata), relating to the transfer of licensing authority of payday lenders from the Department of Justice to the Department of Corporations; and (iii) AB 2293 (Liu), relating to check sellers and bill payers. Mr. Le Bas briefly commented on the Committee's legislative proposals relating to finance lenders and facsimile filings. In general, Mr. Le Bas noted that the Department drafts well-reasoned, well-principled legislation. Co-Chair Bishop inquired with respect to certain legislative cleanup matters, including those arising as a result of the Commodities Futures Modernization Act, and Mr. Le Bas reported that conforming changes were under consideration. The status of the Uniform Securities Act and the Uniform Money Services Act projects of the National Conference of Commissioners on Uniform State Laws ("NCCUSL") was briefly discussed. Jim Fotenos volunteered to contact the California delegates to NCCUSL for an update of their activities, and to obtain a current draft of the Uniform Securities Act.

Gail Oshima informed the group that 25102(f) notices are now available on the Department's website through its Cal-EASI database. Ms. Oshima also noted that the electronic submission of 25102(f) notices is currently under consideration.

B. BLS Executive Committee. David Caplan delivered a status report from the Executive Committee. Mr. Caplan reported that he and Suzanne Graeser would share responsibilities as the Executive Committee liaisons from Northern California. Mr. Caplan complimented Brian McAllister for his efforts in administering the Committee website. Mr. Caplan stressed the importance of expanding the membership of the Business Law Section and encouraged the Committee to consider sending regular updates on significant events to its constituency through its listserv. Mr. McAllister noted that

monthly updates to the Committee's website are being distributed by email to persons on the Committee's email distribution list.

C. Secretary of State. The Committee discussed the most recent drafts of the Corporate Disclosure Statement and Attachment to Corporate Disclosure Statement ("AB 55 Forms") that were distributed with the meeting materials. The Committee discussed potential issues relating to the AB 55 Forms and their related instructions.

D. Partnerships and LLC Committee. Steve Hazen provided a brief report on recent events concerning the Partnerships and LLC Committee. Mr. Hazen noted that the Partnerships and LLC Committee has spent considerable time on the Re-Revised Uniform Limited Partnership Act ("RERULPA") and voted at its last meeting to proceed with its RERULPA project and may next begin seeking a sponsor for legislation to adopt it in California. In addition, the Partnerships and LLC Committee is working on two legislative proposals relating to California limited liability companies; one relating to the consequences of the death of a single member, and the other relating to nonprofits as single members of a California limited liability company. Mr. Hazen also reported on the recent activities of the Financial Accounting Standards Board relative to special purpose entities.

D. UCC Committee. Jim Fotenos reported that the UCC Committee is working on legislative proposals to revise Articles 1, 3 and 4 of the UCC in California to implement changes developed by NCCSL.

E. Nonprofit and Unincorporated Organizations Committee. Terri Erickson reported that she has made contact with the Co-Chairs of the Nonprofit and Unincorporated Organizations Committee and will continue to keep the Committee apprised of its activities.

III. PENDING LEGISLATION/AFFIRMATIVE LEGISLATIVE PROPOSALS.

A. Report by Legislative Liaison. Jim Fotenos reported on the current status of pending legislation. Mr. Fotenos briefly discussed (i) SB 1 (Speier), involving financial privacy, (ii) AB 68 (Simitian), relating to commercial website privacy, and (iii) SB 17 (Escutia), concerning indirect changes of ownership of nonresidential commercial and industrial real property. Mr. Fotenos reminded the Committee that many more legislative proposals are expected to be introduced in February.

B. Secretary of State Fax Filings. Bruce Dravis reported that Senator Romero is carrying the Committee's legislative proposal concerning fax filings. Mr. Dravis also reported that the Los Angeles County Bar Association is interested in cosponsoring this proposal. After a discussion by the Committee, the Los Angeles County Bar Association was approved as a cosponsor of this legislative proposal.

IV. POTENTIAL AFFIRMATIVE LEGISLATIVE PROPOSALS

A. AB 55 Cleanup and Corrections. Keith Bishop provided an overview of potential issues presented by AB 55 and the corresponding need for legislative action. The Committee will work with the Office of the Secretary of State to develop a legislative proposal. The Committee discussed potential constitutional issues relating to the manner in which AB 55 was adopted and also discussed the possibility of preparing a Committee report to address certain issues presented by AB 55.

V. WEBSITE PROJECTS

VI. OTHER PROJECTS

A. Educational Activities. David Pike reported that the Committee would be sponsoring two programs at the upcoming Winter Education Institute of the Business Law Section. One program will be presented by Keith Bishop on Nevada corporations and the other program will be presented by John Carpenter and Jim Fotenos on covenants not to compete under California law. Mr. Pike also reported that the Committee will have the following three programs at the Fourth Annual Business Law Section Spring Meeting: (i) corporate governance under the Sarbanes-Oxley Act, (ii) professional responsibility of corporate lawyers, and (iii) foreign corporations in California under AB 55 and Corporations Code Section 2115. In light of the fact that the meeting will be held jointly with the American Bar Association, the Committee discussed the desirability of including a distinguished member of the ABA to participate in the panel concerning professional responsibility of corporate lawyers. Mr. Pike noted that the deadline for the submission of programs for the Annual Meeting of the California Bar Association scheduled in September is by the end of January. The Committee approved the following three programs for the Annual Meeting: (i) conflicts of interest and engagement letters, (ii) covenants not to compete under California law, and (iii) recent developments in California corporations law. The Committee also discussed the possibility of submitting articles to the *Business Law News* concerning covenants not to compete in California, and a survey of significant developments in California corporate law.

B. Comment Letter on SEC Attorney Regulations. The Committee discussed certain of the comment letters that were filed with the SEC and posted to its website. The vast majority of the comment letters stated that the noisy withdrawal provisions of the proposed rules would be contrary to well-established state laws and questioned the authority of the SEC to preempt state laws relating to privilege and admissibility of evidence.

C. Director Duties to Creditors. Dan Weiser provided a brief overview of a proposed legislative proposal regarding the duties of directors to creditors under the California Corporations Code. Because of the time, the discussions were deferred until the next meeting of the Committee. The Committee will consider this agenda item earlier in its next meeting.

The meeting was adjourned at approximately 12:30 p.m.

James K. Dyer, Jr.